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THE MODERN SPIRIT IN PENOLOGY.

I.

THE most striking feature of our age is the ever-increasing consideration given to those elements which promote the progress of human civilization, and the well-being of society as well as that of every individual. It is due to this tendency that during the last ten or fifteen years a powerful movement has established itself for reforming and humanizing the old methods of dealing with crime.

In times when the psychological faculties and the self-consciousness of man were less developed than they are now, the barbarous treatment of prisoners was actually felt less by them than would now be the case ; and it is quite possible that the treatment of convicts to-day, comparatively lenient, humane and just as it is, is relatively more severe for them than was the case when the rack and other instruments of torture were in full swing. Increasing civilization has created innumerable means of comfort and enjoyment in order to make life as attractive as possible ; the mere restraint of a man's liberty, therefore, involving, as it does, compulsion, exclusion from society, denial of the customary enjoyments of life, and, in the case of individuals who still possess some moral consciousness, the feeling of repentance and shame, is and should be considered as a punishment of no little importance. Herbert Spencer says :

All beyond what absolute morality countenances is as unnecessary, inexpedient and unjustifiable, as it is useless. The necessities of civilization require no gratuitous infliction of pain, no revengeful penalties. Complete life being the end of morality, and the conditions it insists on being such as to render this complete life possible to all members of a community, we cannot rightly abrogate these conditions, even in the person of a criminal, further than is needful to prevent greater abrogation of them. . . . Freedom to

fulfil the laws of life being the thing insisted on, to the end that the sum of life may be the greatest possible, it follows that the life of the offender must be taken into account as an item in this sum, and that we must permit him to live as completely as consists with social safety. . . . It is commonly said that the criminal loses all his rights. This may be so according to law, but it is not so according to justice.

F. I. Monat, president of the Royal Statistical Society and formerly inspector-general of jails in Bengal, says :

Solitary confinement for various periods, deprivation of all sources of enjoyment, prolonged enforced silence and their gloomy accompaniments, aimless, dispiriting and exhausting tasks, have often produced their natural results in wrecking both mind and body. I doubt if they have exercised the smallest influence upon the habitually criminal classes in determent of crime. The reason of this appears to me to be simple and obvious. Pain is a sensation and has no immediate connection with a moral sentiment. Pain, again, is confined to the individual made to suffer it, and can scarcely be fully realized by other persons, even in the active manifestations. The mental and bodily torture of long continued solitary confinement, unrelieved by a ray of sunshine of humanity, is never seen by the outer world, and even if witnessed by others whom it is intended to deter, would have no active terrors, for it is a passive state. The painful scenes witnessed at public executions when the laws were savage in their severity and brutal in their exhibition, had no effect whatever in deterring from crime, and simply demoralized those who thronged to gloat over the sufferings of the victims of perverted justice. . . . In our Norfolk Island, the system of unrelenting severity in its most repulsive form succeeded in converting rational beings into unreasoning fiends, and failed so entirely to deter from the commission of the most appalling crimes, as to lead to its abandonment, as a scandal and reproach to humanity itself.

But there is another more immediate consideration to be taken into account : the formidable fact that in every civilized country, for a long number of years, crime has continually been on the increase, so that the criminal class is an ever-growing danger. France shows during the last half century an increase of crime of 133 per cent. A similar or even more

deplorable picture is shown by every other country of the old continent. In England judicial statisticians wish us to believe that crime has diminished. But this is not the case ; those who study and interpret criminal statistics without bias and who take fully into account all outward influences, do not share such an opinion. If a hundred men are sentenced at one period to ten years, and at another period, for exactly the same offences, to five years, a reduction of fifty per cent of the prison population is effected, but a diminution of crimes either in number or gravity can not necessarily be inferred. In fact, the diminished prison population in England is actually due to the infliction of shorter sentences in the application of the law. Again, the drafting off of youthful criminals to separate establishments through the recent acts of Parliament must also receive its due attention.

The general increase of crime leads the thoughtful mind to enquire whether or not the criminal code and its administration, the management of prisons and the treatment of the law-breaking classes fulfil the purpose for which they are designed. And this question seems to have become at last in every country a burning social problem. But, while Europe is still exhausting its intellectual power in unproductive theories, the experimental genius of the Americans shows us in the New York State Reformatory at Elmira the actual results of more than fifteen years of practical progress ; and the most advanced scientific investigators of Europe do not hesitate to acknowledge that "Elmira" is the practical end to which their theories lead.

As regards the criminal statistics of America it is more difficult than elsewhere to come to a definite conclusion. Up to 1880 criminality had alarmingly increased, but in 1890 it showed a decided fall. The number of prisoners to a million of population was as follows :

| | | | | | | | |
|------|---|---|---|---|---|---|-------|
| 1850 | . | . | . | . | . | . | 290 |
| 1860 | . | . | . | . | . | . | 607 |
| 1870 | . | . | . | . | . | . | 853 |
| 1880 | . | . | . | . | . | . | 1,169 |
| 1890 | . | . | . | . | . | . | 1,133 |

This showing leaves ample room for speculation as to the extent to which the efficacious working of the rational reformatory system has influenced the results.

II.

In order to cope with the problem of crime all authorities on the subject agree that we have to know : What is crime ? Who and what is the criminal ? Why and in what does he differ from the normal individual ? Dr. Anderson, detective commissioner of the London police, takes from the lips of a criminal these words :

Yes, I am a criminal ; but at whose door lies the real guilt of my crimes ? I am just what the state has made me. I was innocent and happy once and a career of usefulness was open to me ; but your infamous laws stepped in and dragged me back to the want and misery and vice from which kind friends rescued me. Those who are responsible for such laws ought now to be in the dock beside me !

Such are the words recorded by one whose position entitles him to be considered one of the greatest authorities on this question ; and although many a man may feel inclined to treat them lightly, they certainly contain ample food for reflection, just as well as when a convict in a moment of reasonableness asks : "What am I to do, sir ? I have never been taught anything but pocket-picking." Or when the superintendent of the educational department at the Elmira Reformatory, Professor James R. Monks, says to visitors : "Ask yourself where you would be, possibly, had you had no educational advantages ; you appreciate the value of your early training and now, if not before, you grasp the meaning of what you see before you. . . ."

It is beyond doubt that the criminal is partly if not entirely produced by our social conditions—that society is far more responsible for the commission of crime than is generally acknowledged. And if this fact alone is kept in mind, one will soon find that the old basis of penal justice must undergo a thorough transformation before it can properly serve its

purpose. But there are other considerations. Sir Edmund du Cane, director of English prisons, says :

An examination of the criminal population as a whole has led some skilled observers to express the opinion that in mental and bodily constitution prisoners are below the average of the population of which they form a part.

And elsewhere du Cane continues :

Crime may very well be compared with physical disease, and the mode of proceeding for repression of the one is in principle the same as for the other. The most effective mode is to remove its causes, which often have their origin in our social conditions, and more often in the absence or weakening of those moral restraints by means of which society is kept together. . . . Many of the criminals do not and possibly cannot comprehend their own position or realize their true self-interest as social and responsible beings, and their actions are but too frequently prompted by what appears to them the expediency of the moment.

Dr. Corre says :

There is something feline in the criminal ; like the cat, he is indolent and capricious, yet ardent in the pursuits of an aim ; the anti-social being knows only how to satisfy his impulsive instincts.

Dr. Wey, of the Elmira Reformatory, says :

It is a mistake to suppose that the criminal is naturally bright. Like the cunning of the fox, his smartness displays itself in furthering his schemes and in personal gratification and comfort. . . .

Dr. A. Krauss says :

Criminals are more astute than intelligent. But what is this astuteness ? It is an instinct, an innate faculty, which does not depend on real intelligence and which is already found precociously perfected in children, in the lowest savages, in women and also in imbeciles. . . .

Rev. W. D. Morrison, chaplain at H. M. Wandsworth Prison, London, says in his admirable book, *Crime and its Causes* :

The criminals possess no power of sustained volition. . . . Often animated by good resolutions, often anxious to do what is right, often possessing a sense of moral responsibility, these unfortunate

creatures plunge again and again into vice and crime. In some cases of this description the will is practically annihilated ; in others it is under the dominion of momentary caprice ; in others, again, it has no power of concentration or it is the victim of sudden hurricanes of feeling which drive everything before them. They experience real sentiments of remorse, but neither remorse nor penitence enables them to grapple with their evil star. The will is stricken with disease and the man is dashed hither and thither, a helpless wreck on the sea of life. Egoism, selfishness, a lack of consideration for the rights and feelings of others, are the dominant principles in the life of both. . . . The bulk are of a humbly developed mental organization. Whether we call this low state of mental development atavism or degeneracy, is to a large extent a matter of words ; the fact of its widespread existence among criminals is the important point.

Professor Bain says :

We must suppose, what is probably true of the criminal class generally, a low retentiveness for good and evil, the analytic expression of imprudence, perhaps the most radically incurable of all natural defects.

These quotations from the most eminent authorities speak for themselves. It scarcely admits now of question that every truly criminal act proceeds from a person who is, temporarily or permanently, in a more or less abnormal condition, and Sir James Fitzjames Stephen is right when he says : "The whole tendency of the age is in the direction of regarding vice and crime rather as diseases, qualifying their unfortunate victim for a hospital, than as causes of just hatred and vindictive punishment."

Now, the law of England and, with scarcely any modification, that of every other country, declares distinctly that a criminal intention does not exist if it can be proved that the culprit at the time of perpetrating the deed was in a state of unconsciousness or mental derangement, so that he cannot justly be held responsible for his action. But the spirit of this clause is grossly ignored in the practice, for the simple reason that the conception of unconsciousness and mental derangement in a man — the state when he is deprived of his mental and

moral responsibility—is still obstinately imperfect. It is not only the insanity as defined by special clauses which has to be considered, but all those elements and influences which compel the recognition of a temporarily or permanently defective state of mental and moral consciousness in the individual. Abnormal development of the physical, intellectual and psychological faculties; moral insensibility and instinctive inclination for the low, ungovernable impulses and passions, whether inherited or produced through external circumstances; as well as youthfulness, homelessness, illiteracy and various other elements which prompt to crime;—are the data which must be taken into account in the modern science of penology.

It is an established fact and needs no proof that no one will commit any wrong or criminal act who is perfectly conscious of what he is doing, who is the master of himself and his impure impulses and inclinations and is able to realize the consequences which must infallibly follow, who knows that restrictions and laws are absolutely necessary for the maintenance of public order, security and peace, and that the highest amount of well-being can only be obtained by a just and honest and law-abiding life. Anyone who commits a wrong act either has no true conception of happiness, or is his own slave—the unfortunate victim of his degenerate state.

That there exist certain forces which do or may permanently or temporarily incapacitate an individual from acting with full consciousness, and from being guided by reason to choose always the right way, is found recognized in the remarks of one of the London judges, who, when sentencing a woman a short time ago, said :

You have become a person of so little moral sense that eventually you have become an instrument, and a willing instrument, in taking away the life of a woman whose only offence towards you was that she was married to a man upon whom you had set your unholy passion.

In spite of this recognition, which involves the most substantial, though perhaps involuntary, condemnation of the law, and especially of its interpretation and application in

practice, this miserable creature was sentenced to death and hanged.

Another illustration may be added: One Sunday morning in the practical ethics class in the Elmira Reformatory, when the subject of discourse was the turning away from the old path, one of the inmates suddenly rose, showing great agitation, and exclaimed: "It is impossible! My father is a thief; my mother is a thief; I am a thief, and can never be anything else." If such a man, conscious of being on the wrong path, is incapable from one cause or another of choosing the right; if in an hour of reasonableness a ray of sunlight penetrates the darkness and enables him to see himself in his perverted nature, and to recognize the criminal causes and motives within — those elements, which seem to render it absolutely impossible for him to be guided by his conscience and intellect; does not this fact powerfully appeal to every human soul for the most careful consideration, if not for pity?

Dr. Virgilio states that in Italy thirty-two per cent of the criminal population have inherited criminal tendencies from their parents. The same proportion is certainly to be found in every other country. Other well-known facts are, that the mortality among criminals is from one-third to one-half higher than that among the rest of the community, and that, while at present ninety per cent of the population of England can read and write — leaving ten per cent to be wholly illiterate — in the English prisons no less than twenty-five per cent can neither read nor write and seventy-two per cent can only read, or read and write imperfectly. A great proportion of the criminal class is thus mentally, morally and physically unfitted to hold their own by honest means in the struggle of life. Statistics show everywhere that the bulk of the criminals are almost always without a trade; the only kind of work they can turn to is rude manual labor, and this is exactly the kind of work which they have not the requisite physical strength to perform. Almost all forms of degeneracy render a man more or less unsuited for the struggle of life; and of degenerate persons, one who has to earn his own livelihood is much more

likely to become a criminal than one who has not. And how many of those who cannot get work or are unable to earn sufficient to lead a fairly human life, take to crime as an alternative !

Now, if a man is physically, mentally and morally unfitted for success in the world; if for one reason or another he does not possess the power to live honestly by his own exertions, although he might wish to do so; under what authority can we claim a right to throw him into prison—a course which in a great number of cases only makes a criminal out of him if he has not been one before ?

In spite of the general feeling that a starving man has a certain right to his neighbor's bread, that necessity knows no law, and that it is better for a man to commit a small offence than to expose himself to death, there appears to be very little real compassion for one who is in want; on the contrary, there still survives palpably a certain spirit of legalism—that the crime lies not so much in the theft or other offense, as in the poverty of the offender, in his lack of ability to get on in the world with being detected in violating the law. Thousands of instances could be cited where the rich and intellectually gifted man without any conscience is practically allowed to do whatever he pleases with his unfortunate and less-enlightened and less-experienced victims. For him moral duty does not exist, but, being well acquainted with the law, his shrewdness enables him to protect himself against the justice it embodies. Such instances are decidedly dark spots in the progress of civilization, and upon society, the state, rests the obligation to use every effort to remove them. But how? If we are sometimes too weak or incapable to weigh the strong and powerful one in the infallible scale of justice, then we are in duty bound to be much more just and conscientious in weighing the weak and helpless.

But to be just, conscientious and humane, demands first of all that the spirit of revenge be abandoned, and that the enforcement of the criminal law be regarded as designed only for the protection of society and the prevention of further

crime. "Judge as well as law-maker," says Professor von Liszt, "deal with crime—manslaughter and murder—as if they were dealing with goods; they are unconscious of the importance—they overlook the individual." To secure full recognition for the importance, the value and the sacredness of the individual, is the simple and only problem of modern sociology as well as of penology; and the widely prevalent notion that the crime should be punished, not the criminal, requires to be reformed, to be humanized and civilized.

III.

Just as we study the causes and consequences of a disease in a man in order to cure and remove it, so we must study the causes and consequences of criminality in the individual if we want to heal and remove it. The danger of contagion and other disastrous consequences is no less in case of crime, when left to itself, than in case of disease under the same circumstances. A madman or a person afflicted with a dangerous disease is prevented, for his own interests as well as the interests of the community, from freely moving about until he is restored to health; so the criminal, for his own interests as well as the interests of society, is prevented from moving freely about until he is cured from his criminal proclivity; and as in the first case so in the second, it is impossible to fix beforehand the date when the restoration to a normal condition will be effected. Therefore, no alternative seems to be left except that of sentences undefined in extent; that is to say, the sentence must be not for a certain period, but for a certain purpose, *i.e.*, until reformation is effected. It cannot be urged too emphatically that the question of the gravity of the offence—whether it is theft, embezzlement or murder, whether attempted or completed—is not what has to be dealt with, but the fact that an offence or irregularity of some kind, which threatens the safety and well-being of the community, has been committed; and this should sufficiently justify society in assuming the right to restrain the perpetrator until

there appears no longer any fear of his repeating a criminal offence.

Fair-minded authorities in every country almost universally agree that reformation of the offender is the solution of the problem. But what is this reformation? Where must it begin, and where end? The process should begin at the commission of an act which warrants society in refusing to allow the perpetrator to move freely in public life; and should end when the subject is brought to such a condition in body, mind and soul as to justify the anticipation that he will in future lead the life of an honest, law-abiding, self-respecting and self-supporting citizen; or, as the excellent clause of the Fassett Law expresses it:

When it appears to the said managers [referring to the Elmira Reformatory] that there is a reasonable probability that the prisoner will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society, then they shall issue to such prisoner an absolute release from imprisonment. But no other form of application for the release of any prisoner shall be entertained by the managers.

This is the sole and entire meaning of "reformation"—the sole and entire end to be sought by the state in coping with the problem of crime and in dealing with the criminal. As soon as the prisoner possesses those qualities which society claims from its members, the state has accomplished its aim and duty and its jurisdiction is at an end.

"As to the amount of punishment," says Sir Edmund du Cane, "the stereotyped custom of assigning the periods of five, seven, ten, fourteen, twenty-one years penal servitude—a custom, no doubt, derived from the days of actual transportation—it is difficult to justify and may even defeat the great object." And here Mr. Havelock Ellis in his excellent work, *The Criminal*, justly remarks: "If our judges, before pronouncing sentence, were first to determine the years to be awarded by a solemn casting of dice, the result might be as good as those reached by the not very dissimilar system now adopted." In the short duration of the trial the judge can scarcely form

for himself a clear conception of the real nature of the offence, much less of the individual character of the offender and the relation of the one to the other. Nor can he, in spite of all the best intentions, say what kind of punishment or treatment will be most conducive to the reformation of the man and at the same time most advantageous to the community. The psychological and anthropological conditions of the individual are of such infinite variety, that no human being is capable of measuring pain and punishment in accurate proportion to the gravity of an offence. Instead of a fruitless search after the precise character and quantity of punishment to be assigned in each case, is it not better simply to draw the line by the single consideration, whether or not the individual is fit to live in society—whether he possesses those qualities which the community chooses to claim from its members. Until we seek out the causes and motives in each individual offence and apply strictly the principle that the offender shall not be liberated until these causes and motives are removed—until his bodily, mental and moral faculties are in such a condition as to be no longer dangerous to the well-being of the community, we shall never be able to approach the solution of the problem. By fixing at the outset the duration of the confinement, we run the risk of either turning the criminal loose upon society before he is cured, or detaining him after his cure has been effected. To make his release depend on the mere lapse of time must surely end in a wrong on one side or the other—a wrong to society or a wrong to the prisoner. Many who are to-day undergoing imprisonment for life or for long terms of years, to their own destruction and misery, to the misery and ruin of their families and at great cost to the state, might with safety be liberated, while on the other hand thousands and thousands are daily released, with the full knowledge that they will return at once to criminal pursuits.

It is a formidable fact that the prison population chiefly consists of recidivists. Germany's statistics, for instance, prove that eighty per cent of those who have once been in prison commit crime again, while scarcely any country in Europe

shows a less gloomy record. "Every relapse of a released convict is a living condemnation of the prison," says Dr. Mittelstaedt, and it needs no comment. If a criminal is allowed to live in continual alternation of liberty and imprisonment; if sentences of week upon week, month upon month, year upon year have been imposed upon him without effecting the slightest degree of reformation and improvement — without any but a negative and destructive purpose; if such a miserable being is locked up ten, twenty, fifty or a hundred times, and each time released to the danger of the community; is this not proof enough that there is something radically wrong in the whole system? Speaking in the spirit of Dr. Anderson : Does the law, with all its agencies, appear anything but a mere farce? Millions of offenders are sent annually to prison ; thousands of officials are required to feed, clothe, occupy and instruct this army of criminals, and millions of money are spent annually for their maintenance and safety, for judicial proceedings, officials, police, *etc.*; and if any one asks the pertinent question : For what practical purpose? With what visible result? he may wait in vain for an answer. When we shall have advanced so far as to have wholly extirpated the old vindictive spirit of punishment in theory and in practice, and to have recognized that the end, and the only end, of imprisonment is the protection of society, the prevention of crime and the reformation of the criminal, only then shall we realize how utterly the present system fails of its true end — how entirely destitute of any return are the trouble and expense to which the honest members of society are subjected.

If a convicted man is as little fitted for social life at the expiration of his sentence as he was at the commencement of it, his punishment has merely satisfied the feeling of public vengeance, but has fulfilled only a negative purpose, accomplished only a destructive work. The imprisonment of the offender can only be justified where it aims to prepare the prisoner for liberty, for that life which he has to live after his release. From civil life he is taken, to civil life he has to

return. The ancient spirit of penology considers its duty fulfilled after the offender has been convicted and sentenced to imprisonment for such and such a length of time; but the modern spirit says that the duty of the penologist just commences with the imprisonment of the convict. The prison is the place where the improvement, renovation and reformation of the criminal in body, mind and soul has to be effected; its function is similar to that of the hospital, but wider in scope.

In no country of Europe is any attempt made to transform radically the character of the prisoner during the time of his imprisonment; nor even to change the course of life of the first offender or to decrease the criminal population. Prisons here are in fact institutions for the incubation of criminals, rather than for their reformation. This is acknowledged by every authority on the prison question. As Dr. Paul Aubrey says: "The prison is still the best school of crime we possess." Taking into account the vast number of relapsed criminals, and the many first offenders who, for lack of proper and timely treatment, become through no fault of their own the so-called irreclaimable criminals, it is hard to maintain that the prison with the old *régime* exercises any deterrent influence whatever. But not only do such places of confinement fail to serve any beneficial purpose, either to the community or to the prisoner; they even exercise systematically a demoralizing influence. The natural striving instinct in a man is blunted and extinguished, the prisoner thrown back into his low, primitive animal sphere and compelled to remain therein until the grave-digger mercifully finds room for him beneath the ground. One is fully justified in asking: Is there any reason for the further existence of such institutions in society? The treatment of the hardened criminal is too lenient and of the reclaimable offender too severe. No sickly sentimentality or demoralizing cruelty, no undue leniency or sympathy, no excessive philanthropy, but the desire to be just—this is what is wanted: justice, based on purely human feeling, on the ethics of our existence and the progress in civilization.

IV.

A full understanding of the fundamental principles of the system in force in the Elmira Reformatory furnishes the key to this momentous problem ; and the introduction of this system—the physical, intellectual and above all moral sana-tarium for reclaimable convicts—into every civilized country cannot be too emphatically recommended. Whoever pays a visit on a Sunday morning to the class in practical ethics in the Elmira Reformatory and witnesses the serious faces and moistened eyes, the play of lights and shadows over the uplifted countenances of the inmates, with their quick apprehension of fine intellectual distinctions and solemn spiritual truths—"condemned felons everyone, yet men, whom I had learned to love," says Professor Collins, the late secretary of the educational department in Elmira—would no longer need to search for the quintessence of a rational reform of the old *régime*. This is the base upon which to operate ; it speaks more of the soundness of the system pursued in Elmira than the fact statistically proved that over eighty per cent of the inmates are released as reformed and reclaimed human beings, and that a much higher percentage might be attained if the "indeterminate sentence" system were applied without restriction. The idea that the criminal cannot be improved and converted into an orderly, law-abiding and useful member of the community has no longer any foundation, since there is ample proof that means have been found to make the achievement of this end possible. In every human soul there is a spot which, if rationally cultivated and sown with good seed, could produce good fruits. The only difficulty lies in taking the trouble to find this spot ; but, if we fully realize that the rational reformation of the criminal is only secondarily in his interests, but primarily in the interests of society, it certainly repays whatever trouble we take. The state, of course, does not owe a greater duty to the convict than to other individual members of the community, but reformation—the extirpation of the criminal germ by every available

means—is the only way to diminish criminality and to afford society real protection.

General Superintendent Brockway would say that the three chief factors of reform, if arranged in order of importance and the degree of influence which they exercise on the man, would be education, conduct and work; for the schoolroom is alone qualified to bring an individual morally and intellectually to a full self-consciousness. This principle is the characteristic and most important feature of Brockway's system. Ignorance is, as statistics prove, one of the most formidable causes of crime. True practical education of mind and soul is a marvellous regenerative power, is the magic wand which converts criminals into honest, self-respecting and self-supporting men, is the only foundation of a sound moral character. Education in Elmira means ethical, intellectual and physical culture. The treatment, as individually as possible, consists on the physical side in awakening, strengthening and refining the flaccid muscular system and the blunted senses which are so common among criminals, and on the intellectual and moral side in accomplishing the prisoner's education, in curing his defective and undeveloped moral sense, in forming in him a sound and natural will power, in developing individuality and self-respect, in manufacturing character, establishing those virtues of which convicts are most in want and which are absolutely necessary for a man if he is to lead the life of an honest, self-supporting, law-abiding member of modern society. The educational system is directed more to producing right development rather than to furnishing with useful information. In the class for practical morality, commonly called the "ethical factory," for instance, the instructor takes up subjects connected with every-day life and treats them in their moral aspects. Such topics are discussed as these: "Is honesty the best policy?" "The ethics of politics." "The struggle for life." "Is war justifiable?" "The ethics of education." "The ethics of punishment." "Our first duty to humanity." "The abolition of poverty." "How does the competition in trade between the American and foreigner

affect wages?" "In case of necessity is it better to beg or to steal?" "Our first duty." Here, the prisoner is encouraged to give free vent to his opinion and in fact the most earnest interest that can possibly be found in any class is excited amongst these prisoners.

Moret defined the criminal character as "a morbid deviation from the normal type of humanity;" and the restoration of such a nature from the morbid to the normal cannot be effected more radically and thoroughly than by such a system — by developing in the prisoner the elementary principles of morality, by bringing him under the dominion of the ideas, habits and motives that everywhere pervade and impel the community and which are ordinarily sufficient to restrain men from the commission of crime. Thus we have the general principle or practical rule of "reformation." The prison management has to assimilate the condition of the prisoner to that of the free man and to cultivate in him the same habits, appeal to the same motives, awaken the same ambitions, develop the same views of life, and subject him to the same temptations that belong to the free community of which he is to be fitted to become a member. To accomplish this end the prisoners in the Elmira Reformatory not only receive industrial training in trades — thirty-two different trades are now carried on for instruction as well as for production — but also wages, out of which they have to pay for their food, clothes, medical treatment, etc., just as a workman in ordinary life receives his wages and pays for his subsistence. It is impossible to conceive of another system capable of thus assimilating the prisoner's condition to that of the common civilian and making the subject fitted for civil life.

One drawback apparently prevails in Elmira as in most other prisons, namely, that the productive power of the prisoners is not fully utilized. Dr. Monat says :

It should not . . . be forgotten that the criminal, had he not taken to evil courses, would himself have competed with others of his own class or trade in the labor market. To teach him an industrial art that will enable him to gain an honest livelihood on

release, is merely to restore him to his natural position ; and surely it is an unmixed gain to society to convert by this means an unprofitable consumer into a profitable producer. We thereby create nothing new ; we merely transform an instrument of evil into one of good.

The cost of maintenance of a convict is an unjust tax upon the community, and bears more heavily upon the honest laborer than his natural competition in the labor-market. Everyone who lives has to earn his living; and prisoners should be the very last to enjoy exemption from this rule. Every prisoner should maintain himself by useful work, and should not be allowed to live and die a debtor to the honest citizen. This law can be observed not only without injury to the individual, but with every advantage in helping to realize the ultimate end of reformation with the subject.

Obermaier in the Munich prison and Colonel Montesinos in Valencia prison introduced and carried on with their prisoners all kinds of industrial work; the result being that each prisoner by occupation and industry maintained himself. Dr. Monat also informs us that two of the Indian prisons, Alipore and Hooghly, were continuously self-supporting, while the prisoners in six other prisons earned more than the cost of their maintenance. The prisons at Ghent produce annually a clear income of £5,000. In Coldbath-Fields prison forty prisoners made each a net profit of £17. 4. 1½d per annum, working seven and a half hours per day.

The indeterminate system of sentences is applied in Elmira with some restriction. Its advantages, however, are obvious there. It practically places the release of the prisoner in his own hands; he has to work himself through until fit for liberation. While every assistance is afforded him to make progress, he has actually to strain his physical, intellectual and moral capacities to the very utmost in order to attain his goal. "The prisoners feel," as Brockway says, "at every moment the presence of pressing responsibilities; their best energy is called forth to make the day count for progress, for enlargement." At every step, at every look, at every

thought, there is some rule or requirement calling for alertness, complete self-control and the fullest activity of the spiritual and physical man. The prisoners not only receive education, but special attention is paid to the occupation and continual direction of their mental and moral faculties throughout their waking hours, so that idleness or any temporary relaxation of mental tension appears to be impossible. The prisoner's desire for liberty, which is the foundation of the indeterminate sentence system, and which has nowhere else been utilized as a motive power for the renovation and reformation of offenders, embodies those elements which cause all progress in civilization—the very principles of the ethics of existence. And if we take away the natural stimulants of progress in a man, we also take away his living spirit and his moral will and power. To arouse and encourage the spiritless prisoner, and to foster in him hope and ambition until they become habitual, is the quintessence of the "indeterminate system"—the supreme art of a true reformatory prison management.

V.

The idea of the indeterminate sentence is not new; it was first announced by Frederick Hill, late inspector of prisons for Scotland, and has since been advocated in one shape or another by various authorities on the criminal question, though the system was first put into practice by Z. R. Brockway at Elmira. In the discussions of the European International Association for the Reform of the Criminal Law—founded through the energetic initiative of Professor von Liszt in 1889, and consisting now of more than six hundred members from twenty-five different countries—the indeterminate sentence has constituted from the beginning the cardinal question; but although a growing demand for its introduction has been set up by theorists all over Europe, the system has nowhere there been put into practice. A great step, however, towards reform in the right direction, is the "probation system," or conditional remission of punishment, adopted in various countries, as Austria, Belgium, France,

England, Italy and the United States. According to this, the judge is authorized in case of a first offender to defer the execution of the sentence for a certain length of time; if the offender during this time does not fall again into the hands of justice, the penalty will ultimately be cancelled. In Austria the passage of the penal code referring to conditional release authorizes the judge, in cases which deserve special consideration, to defer, for a time varying at his discretion from one to three years, the execution of a sentence of imprisonment that does not exceed six months. This conditional release is not applicable to persons whose address cannot be identified, or who have already been convicted of crime or offence, or who are under police supervision. The Belgian law authorizes the suspension of execution in similar cases for a time not exceeding five years, with remission of the penalty in case of no new offence in that time, or, in the contrary case, with cumulation of penalties. The French code provides for a suspension for three years of a sentence to imprisonment for three months or less, with the same effects of good or bad conduct in the interval. A similar provision has been inserted in the new Italian penal code. In Germany, in spite of the fact that on the average seventy-eight per cent of all those convicted for crime or offence are sentenced to less than three months imprisonment, the suspension of punishment system has not yet been introduced, but, as Professor von Liszt says, "it can not be a question *whether*, but *how*, it is to be introduced into the German penal code."

These enactments for the suspension of punishment are dictated by the desire to keep a man out of prison as long as possible, in order to save him from social ruin, from the loss of his position in life, in short, from those conditions which threaten his very existence. But there is ample justification for the question: Of what use is it to open the prison door for a few weeks or a few months, when apparently the only result is to induce or oblige the offender to proceed with the commission of crime and to become a habitual criminal. This

privilege benefits only a very small percentage of the law-breakers, and practically does not reach those who are afflicted with the real criminal tendency. Thus the actual criminal classes in Europe are still left entirely to themselves. No law aims to convert them into rational beings, or to prevent them from committing crime and leading the life of the habitual criminal, and no prison management is capable of overcoming the defects and negative forces of the law. How many of the most hardened of criminals would be well justified in saying : "Had I only been properly treated for my first offence, no doubt it would have saved me." If every offence were thoroughly treated in the first case, by far the greatest part of all habitual criminals would be saved. The beginning of actual criminal conduct is the point at which the law must strike, at which the cure of the offender has to begin ; and unless he is brought under the care of men who have an intimate knowledge of civil life, and who take special interest in the cure of the subject,—more interest than is generally taken in return for the salaries paid,—it is vain to think of attaining the end in view ; the subject will never be brought into that state which makes him fitted to face the world on equal terms with the normal individual.

The objection has been raised that a reform system such as is advocated above would involve too lenient a treatment of the criminals and might even prove an incentive to many to commit an offence in order to partake of the advantages afforded thereby. Such an argument is merely speculative and has no real foundation. In fact, for the criminal and criminally inclined classes there is no severer punishment than physical, mental and moral elevation—occupation which leads and forces them into a better and nobler sphere of life: they have a decided preference for the low. Rev. W. D. Morrison, with his many years' experience with prisoners, says :

The actual criminal class persists in the life they have adopted merely because it suits them best. One of the great difficulties in dealing with persons of this stamp is their hatred of a well-ordered

existence ; in a vast number of cases the life they live is the only kind of life they thoroughly enjoy. "Let us alone and mind your own business," is the secret sentiment and often the open avowal of most of these people. "We should be miserable living according to your ideas ; let us live according to our own."

Crime, of course, will always remain inseparable from mankind ; but there appears to be no doubt that the criminal classes can be broken up, that the number of law-breakers can be reduced, and that "systematic and organized crime" can be stamped out of society, if not within one, yet certainly within a few generations.

ALEXANDER WINTER.